

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

FILED
01/25/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
40E-0067-R-2022
Ostrem, Eyvind
5.00

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MISSOURI RIVER BASIN BETWEEN MUSSELSHELL RIVER
AND FORT PECK DAM - BASIN (40E)
PRELIMINARY DECREE

CLAIMANTS: Bridget A. Bullinger; Jared R. Bullinger

OBJECTOR: United States of America (Bureau of Land
Management)

CASE 40E-0067-R-2022
40E 210774-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water right claim 40E 210774-00 appeared in the Preliminary Decree for the Missouri River Between Musselshell River and Fort Peck Dam (Basin 40E) issued October 7, 2020. The claim received an objection from the United States Bureau of Land Management (United States) and issue remarks from the DNRC during its review in preparation of the Preliminary Decree indicating potential legal or factual issues with the claim. The Water Court consolidated the claim into Water Court Case 40E-0067-R-2022 to address the objection and issue remark.

The Court held an initial status conference in this matter and the Claimants failed to appear. The Court requested that the United States inform the Court and Claimants of modifications it requested, and on August 9, 2022, the United States submitted its Response supporting its objection. The Court asked the Claimants for input on the modifications requested by the United States and proposed in the issue remarks. The Claimants never contacted the Court or otherwise participated in the case.

FINDINGS OF FACT

1. Claim 40E 210774-00 is a water spreading irrigation claim to water from Squaw Creek.
2. The United States objected to remove United States owned land from the claim's place of use. On August 9, 2022, the United States submitted its Response supporting its objection.
3. The claim also received the following issue remarks from the DNRC:

THE DIVERSION MEANS FOR POINT OF DIVERSION NO. 3 APPEARS TO BE A DAM.
SEE CLAIM FILE FOR RESERVOIR INFORMATION.

THE SOURCE NAME FOR POINTS OF DIVERSION NO. 1 AND 2 APPEARS TO BE SQUAW CREEK. THE SOURCE NAME FOR POINT OF DIVERSION NO. 3 APPEARS TO BE UNNAMED TRIBUTARY OF SQUAW CREEK.
4. The following modifications should be made pursuant to the issue remarks and the United States' Response:

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2N2	6	19N	32E	Garfield

Period of Diversion: January 1 to December 31

Diversion Means: Dike

Source: Squaw Creek

2	S2S2	31	20N	32E	Garfield
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Period of Diversion: January 1 to December 31

Diversion Means: Dike

Source: Squaw Creek

3	NENW	6	19N	32E	Garfield
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Period of Diversion: January 1 to December 31

Diversion Means: ~~Dike~~ **DAM**

Source: ~~Squaw Creek~~ **Unnamed Tributary, Squaw Creek**

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	79.00		<u>S2S2</u>	31	20N	32E	Garfield
2	21.00		N2	6	19N	32E	Garfield

Add informational remark:

PLACE OF USE INCLUDES GOVT LOTS 1, 2, 3, AND 4 IN SEC 6 TWP 19N RGE 32E GARFIELD COUNTY.

5. The point of diversion and diversion means corrections are supported by a DNRC note in the claim file explaining that the claim has one main point of diversion, POD ID No. 3, where water from an unnamed tributary of Squaw Creek is diverted via a dam to charge a dike system. The United States' requested modification to the place of use is consistent with Montana Cadastral records showing United States ownership of the N2S2 of Section 31.

6. The Claimants failed to appear at the initial status conference in this case. On two subsequent occasions, the Court ordered the Claimants to inform it if they disagreed with the modifications requested by the United States and proposed by the DNRC (July 7, 2022, Court Minutes and Order Setting Filing Deadline; October 21, 2022 Order to Show Cause). The Court informed the Claimants that if nothing were filed, it would conclude that they agree with the proposed changes. The Claimants did not respond and have not contacted the Court regarding this matter as of the date of this report. The Court therefore concludes the Claimants agree with the proposed changes.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.

2. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing, or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R. Sanctions applied against claimants may include modification of the claim to conform with information obtained by the court or included in an objection. Rule 22, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The Claimants have failed to participate meaningfully in this case, despite being given opportunity to do so. Therefore, the claim should be modified in accordance with evidence before the Court as described in Finding of Fact No. 4, above. These modifications resolve the issue remarks on the claim, and the remarks should be removed.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of the water right claim is attached to this Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail

Eve W McDonald, Trial Atty
US DOJ-ENRD
999 18th St, So Terrace, Ste 370
Denver, CO 80202
(303) 844-1381(Eve)
Evelyn.mcDonald@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV

Mark Widerschein, Trial Attorney
NRS-ENRD US DOJ
PO Box 7611
Ben Franklin Station
Washington, DC 20044-7611
(202) 532-5803
mark.widerschein@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV

Service Via USPS Mail

Bullinger, Jared R
Bullinger, Bridget A
1080 12th St E
Dickinson, ND 58601-4237

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, BETWEEN MUSSELSHELL RIVER AND FORT PECK DAM
BASIN 40E

Water Right Number: 40E 210774-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: BRIDGET A BULLINGER
1080 12TH ST E
DICKINSON, ND 58601 4237
JARED R BULLINGER
1080 12TH ST E
DICKINSON, ND 58601 4237

***Priority Date:** DECEMBER 31, 1949
***Type of Historical Right:** USE
***Purpose (use):** IRRIGATION
Irrigation Type: WATER SPREADING
Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.
***Volume:** 150.00 AC-FT
Climatic Area: 1 - HIGH
***Maximum Acres:** 100.00
***Source Name:** SQUAW CREEK
Source Type: SURFACE WATER
***Source Name:** UNNAMED TRIBUTARY OF SQUAW CREEK
Source Type: SURFACE WATER
***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2N2	6	19N	32E	GARFIELD
*Source Name: SQUAW CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: DIKE						
2		S2S2	31	20N	32E	GARFIELD
*Source Name: SQUAW CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: DIKE						
3		NENW	6	19N	32E	GARFIELD
*Source Name: UNNAMED TRIBUTARY OF SQUAW CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: DAM						
*Period of Use: JANUARY 1 TO DECEMBER 31						

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	79.00		S2S2	31	20N	32E	GARFIELD
2	21.00		N2	6	19N	32E	GARFIELD
Total:	<u>100.00</u>						

PLACE OF USE INCLUDES GOVT LOTS 1, 2, 3, AND 4 IN SEC 6 TWP 19N RGE 32E
GARFIELD COUNTY.